**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

| | | |
|---|---|---|
| JOSE ANDRES CAZARES, Special Administrator of the Estate of ANDREW CAZARES, Deceased | ) | |
| Plaintiff, | ) | Case No. 1:13-cv-05626 |
| v. | ) | Honorable District Judge Kendall |
| JOSEPH FRUGOLI, JOHN R. MORAN, PRIMERO, INC., an Illinois Corporation, METROPOLITAN BANK LAND TRUST 1463, and CITY OF CHICAGO, municipal corporation | ) | Honorable Magistrate Judge Martin |
| Defendants. | ) | |

| | | |
|---|---|---|
| FAUSTO T. MANZERA, as Special Administrator of the Estate of Fausto A. Manzera, deceased, and Maria Valez, as co-special administrator of the Estate of Fausto A. Manzera, deceased. | ) | Case No. 1:13-cv-05626 |
| Plaintiff, | ) | Honorable District Judge Kendall |
| v. | ) | Honorable Magistrate Judge Martin |
| JOSEPH FRUGOLI, JOHN R. MORAN, PRIMERO, INC., an Illinois Corporation, METROPOLITAN BANK LAND TRUST 1463, and CITY OF CHICAGO, municipal corporation | ) | |
| Defendants. | | |

**CITY OF CHICAGO'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO BAR KRISTI ALLGOOD AND GEOFFREY P. ALPERT**

Defendant, City of Chicago ("City"), for its memorandum of law in support of its motion to bar Kristi Allgood and Geoffrey P. Alpert, states as follows:

## INTRODUCTION

In their fifth amended complaints, plaintiffs allege their decedents were struck and killed by a car negligently driven by Joseph Frugoli ("Frugoli"), an off duty Chicago police officer, on April 10, 2009. (See Dkt Nos. 86, 87). In each complaint, Count I is a wrongful death claim against Frugoli and Count II is a survival claim against Frugoli whereas Count III is a Dram Shop Act claim against Primero, Inc., d/b/a Dugan's, John Moran and Metropolitan Bank Land Trust 1463 for dispensing alcohol to Frugoli on the date of the accident. (See Dkt. Nos. 86, 87). Count IV of each complaint is a *Monell* claim against the City under 42 U.S.C. Sec. 1983 wherein plaintiffs allege their decedents' substantive due process rights to bodily integrity were violated by the City's *de facto* policies which proximately resulted in Frugoli engaging in "misconduct without fear of official consequence." (See Dkt. Nos. 86, 87, para. 25). It is undisputed Frugoli was off duty at the time of the accident and driving his own personal vehicle.

To support their *Monell* claim, plaintiffs retained and proffered the "expert" reports of Kristi Allgood ("Allgood") and Geoffrey P. Alpert ("Alpert"). (Allgood's report is attached as Exhibit 1 and Alpert's report is attached as Exhibit 2). However, the reports and testimony of Allgood and Alpert should be barred for the reasons that follow, pursuant to Federal Rule of Evidence 702 and the Supreme Court's opinion in *Daubert v. Merrell Dow Pharm., Inc.,* 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). Ms. Allgood is unqualified to offer the opinions expressed in her report, her reasoning and methodology are unreliable and her testimony will not assist the trier of fact. Mr. Alpert did nothing more than read Ms. Allgood's report, failed to apply any methodology, and his opinions are irrelevant, unreliable, duplicative and will not assist the trier of fact. As such, both Ms. Allgood and Mr. Alpert should be barred as witnesses in this case.

## BACKGROUND

Kristi Allgood is an epidemiologist, which is the study of diseases such as heart disease, stroke and cancer. (Relevant portions of the deposition of Ms. Allgood are attached as Exhibit 3; Exh. 3, p. 8). Ms. Allgood is not a specialist in sociology. (Exh. 3, p. 14). She has no psychiatric experience or background and is admittedly not qualified to give psychological opinions. (Exh. 3, p. 8). She has never been qualified as an expert witness in any federal or state court and has never testified in any case before. (Exh. 3, pp. 47, 48). Originally, Dr. Steven Whitman was retained by the plaintiffs in this case. (Exh. 3, p. 13).[1] He passed away and then she was retained. (Exh. 3, p. 13). She has not been retained in any other cases. (Exh. 3, p. 26). She has never been retained as an expert in any case involving the police other than the present case. (Exh. 3, pp. 26, 27).

This is the first report she has authored regarding police activities. (Exh. 3, p. 46). She has no education or experience in criminal justice or criminology. (Exh. 3, p. 10). She has no education or experience in law enforcement. (Exh. 3, p. 10). She has no education or experience in administrative investigations for law enforcement. (Exh. 3, p. 11). She has no education or experience in internal affairs of law enforcement. (Exh. 3, p. 11). She has no education or experience in police practices. (Exh. 3, p. 11). She has never personally investigated a complaint or complaint register against a police officer. (Exh. 3, p. 11). She does not know what should or should not be in a complaint register file. (Exh. 3, p. 92). She has never been involved in deciding or making a decision about the allegations against a police officer in a complaint or complaint register. (Exh. 3, p. 12). She has never taken any classes related to

[1] Ms. Allgood testified she did assist Dr. Whitman on four cases before he died. (Exh. 3, p. 62). On those cases, she was the data manager and Dr. Whitman “was the expert.” (Exh. 3, p. 62). She did not use or rely on any of the information from those four cases for her report or conclusions in this case. (Exh. 3, pp. 39, 63).

police or administrative investigation. (Exh. 3, p. 32). She has no background in the subject matter of police activities. (Exh. 3, p. 12). She has no training in policing or administrative investigations. (Exh. 3, p. 48).

Ms. Allgood has never done any academic studies of police departments. (Exh. 3, p. 14). She has never looked at a police department in any other city or town. (Exh. 3, p. 14). She has never taken any courses in criminology. (Exh. 3, p. 14). She has never interviewed any police officers with regard to their work and has not consulted with any police officers about her testimony in this case. (Exh. 3, p. 15). She has never interviewed anyone in the Internal Affairs Division of the Chicago Police Department regarding her report and has never spoken to anyone in the Internal Affairs Division about anything. (Exh. 3, p. 16). She is not aware of the goals of a discipline system in a metropolitan police department, did not perform any independent research regarding supervision of police misconduct, and has no independent knowledge of such topics. (Exh. 3, p. 54).

She did not tell the plaintiffs' attorneys what she wanted to do in this case and was not involved in any way in deciding what information to review. (Exh. 3, pp. 79, 80). Instead, plaintiffs' attorneys provided her with a DVD of 85 pdf files and told her to answer two questions. (See Exh. 3, pp. 76, 77, 79, 108). She did not come up with any questions on her own. (Exh. 3, 108). The two questions were (1) whether Chicago police officers had reason to believe in 2009 they could drink and drive with impunity and (2) whether the "data" spoke to whether a "code of silence" exists in the Chicago Police Department ("CPD"). (Exh. 1, p. 5). She did not ask the plaintiffs' attorneys for any additional information to review in this case. (Exh. 3, p. 44).

The 85 pdf files she reviewed consisted of 65 complaint register ("CR") files involving DUI or alcohol related complaints against CPD members from May 10, 2003 to April 28, 2009 and 19 CR files involving Mr. Frugoli (including one for the April 10, 2009 accident at issue). (Exh. 3, pp. 77, 78). She does not know the significance of May 10, 2003 and never asked. (Exh. 3, pp. 82, 83). She assumed, but does not know if the CR files were complete and never asked for any additional information. (Exh. 3, pp. 83, 105, 106). She admitted some CR files were redacted or missing information (for example, relating to blood alcohol levels), but she never asked for the missing information even though she admitted "it might" change her conclusions in this case. (Exh. 3, p. 91).

She characterizes her report as a statistical report. (Exh. 3, p. 54). She took data from the CR files she reviewed and put it in a statistical software program called SAS and the computer "spits [it] out." (Exh. 3, pp. 65-67). The computer software also tells her if it is statistically significant or not. (Exh. 3, pp. 65, 66, 185). It would not be any different from anyone who purchased the SAS software and did it themselves. (Exh. 3, pp. 72, 73). When she ran the data, Ms. Allgood found 82% of the 66 alcohol CRs were sustained against the officer involved. (Exh. 1, Table 1; Exh. 3, p. 113). Ms. Allgood admitted that was a high sustained rate. (See Exh. 3, p. 114). She also found the initial/recommended discipline was 30 days or more suspension/separation in 72% of those cases.[2] (See Exh. 1, Table 1). The final discipline imposed consisted of 46% who received 30 days or more suspension/separation, 35% who received less than 30 days, 10% who retired/resigned/leave of absence, and 9% who received no discipline (the 6% plus 3% who were deceased). (Exh. 1, Table 1).

[2] The remaining 28% consisted of 6% receiving no discipline, 19% being recommended for less than 30 days suspension and 3% deceased. (See Exh. 1, Table 1).

Based solely on her review of the 66 CRs involving alcohol (the 65 CRs above plus the April 10, 2009 CR), Ms. Allgood affirmatively answered the first question posed to her by plaintiffs' attorneys and opines CPD officers, including Mr. Frugoli, had reason to believe they could conduct themselves with impunity. (Exh. 1, p. 22, Exh. 3, p. 124). The only reason she answered the question affirmatively was because of the aforementioned changes in discipline in some cases from the initial recommended discipline to the final discipline. (Exh. 3, pp. 124, 125). But she does not know why there were changes and she admitted she has no experience with police board hearings, no experience with police employment agreements, and she does not know anything about the grievance process. (Exh. 3, p. 118). With regard to a 30 day suspension, she admitted it "could be" meaningful and significant. (Exh. 3, p. 121). She does not know if it is in line with other police departments or with standards for police discipline, but used it only because "that's what most of them had." (Exh. 3, p. 121). Without any substantive basis, she did not think the change in discipline compared favorably with statistics for regular citizens. (Exh. 3, p. 126, 127). She has conceded, however, there is nothing in her background that provides a basis for her opinion in this regard and anyone could read public reports on DUIs and come to the same conclusion. (Exh. 3, pp. 127, 128).

Ms. Allgood also affirmatively answered the second question posed to her by plaintiffs' attorneys and opines she has "presented data suggesting that there is a 'code of silence' within the CPD." (Exh. 1, p. 22; Exh. 3, pp. 142, 143). She bases this opinion on her perception of a "failure to report" in the CR files she reviewed when compared to the State of Illinois number of DUIs. (Exh. 3, p. 143). When determining if there a "failure to report" in the CR files she reviewed, Ms. Allgood admitted she made that determination on her own. (Exh. 3, pp. 96-98). She further admitted she does not know if there are rules about it and just assumed there were rules about CPD officers' self-reporting DUIs outside of the City of Chicago. (Exh. 3, pp. 102, 103). She is not aware of any DUI or alcohol related incidents involving CPD officers other than the CRs she reviewed (which were all actually reported contrary to her self-serving "failure to report" moniker). (Exh. 3, p. 103). With regard to the 18 CR files she reviewed involving Frugoli, she does not know one way or the other if any of them should have been sustained. (Exh. 3, pp. 193, 194, 210). She also admitted she does not have a background for such a determination. (Exh. 3, p. 193, 194). Nor does Ms. Allgood have any evidence CPD members are treated any differently by the court system. (Exh. 3, p. 222).

Ms. Allgood did not review any depositions in this case. (Exh. 3, p. 243).[3] She has not reviewed the plaintiffs' complaints in this case. (Exh. 3, p. 41). Ms. Allgood did not operate under any guidelines or standards when she answered the two questions posed to her by plaintiffs' attorneys. (Exh. 3, p. 235). Nor can she point to any guidelines or standards to support her conclusions in this case. (Exh. 3, p. 235, 236). She has not been asked to consult on any other cases. (Exh. 3, p. 236).

Although she has peers in the field of epidemiology, she never discussed her work in this case with any other professionals in the field of epidemiology. (Exh. 3, p. 16). She has never written any peer reviewed articles involving the police or administrative investigations. (Exh. 3, p. 34). When initially asked at deposition, she denied her report was peer reviewed in this case and then changed her answer to say it was peer reviewed by Mr. Alpert. (Exh. 3, p. 39). She did not ask for her report to be peer reviewed and does not know why it was. (Exh. 3, p. 42). She

[3] Notably, Ms. Allgood did not review Mr. Frugoli's deposition. (Exh. 3, p. 146). She just has "to assume" what he was thinking. (Exh. 3, p. 147). In fact, Mr. Frugoli testified any lack of discipline had nothing to do with his decision to drink and drive on April 10, 2009 and he always believed his chances of being arrested for DUI were the same as the general public and he knew of police officers who were arrested for DUI and terminated from employment as a result. (Relevant portions of the deposition of Mr. Frugoli are attached as Exhibit 4 and incorporated herein by reference; Exh. 4, pp. 69, 70, 87, 90, 92).

has never seen Mr. Alpert's report and, in fact, does not even know if he did one. (Exh. 3, pp. 39, 40).

Mr. Alpert is a criminologist. (Relevant portions of the deposition of Mr. Alpert are attached as Exhibit 5; Exh. 5, p. 30). He is not an epidemiologist. (Exh. 5, pp. 30, 31). His report in this case is one and half pages in length with his conclusions set forth in a half page. (Exh. 2, Exh. 5, p. 10). He does not know why he was asked to review Allgood's report and assumes they wanted someone else to look at it to see if "it was appropriate." (Exh. 5, pp. 9, 10). When he asked why, he was told he "might be a better person to represent it if this goes to trial." (Exh. 5, pp. 9, 10). He has no opinions in this case other than what's set forth in his report. (Exh. 5, p. 11). The plaintiffs' attorneys' request to Mr. Alpert was for him to review Allgood's report and it "was a very limited assignment" and "that's really all I did." (Exh. 5, p. 17). He has never been asked to peer review another expert's report before. (Exh. 5, p. 49).

Mr. Alpert has not reviewed any of the CR files in this case nor did he ask to review any CR files for this case. (Exh. 5, p. 42). He just accepted whatever Allgood said about the files. (Exh. 5, p. 46). He did not conduct any statistical tests. (Exh. 5, p. 53). He did not make any determination whether or not her data was statistically sufficient. (Exh. 5, p. 53). He has not done any research. (Exh. 5, p. 65). He has not read Frugoli's deposition. (Exh. 5, p. 39). He did not verify any information in Allgood's report. (Exh. 5, p. 70). He does not know if the information she cited is accurate. (Exh. 5, p. 71). He did not double check her information or data. (Exh. 5, p. 86). He is not aware of "how she computed" her data. (Exh. 5, p. 52). He is not familiar with her background other than what she put in her report. (Exh. 5, p. 50).

Mr. Alpert is not expressing the opinions in Ms. Allgood's report. (Exh. 5, p. 44). He has never testified about a "code of silence" existing in a police department. (Exh. 5, p. 34). He is not aware of anyone giving an opinion on a "code of silence" based solely on a review of alcohol or DUI complaints. (Exh. 5, pp. 39, 40). He has never seen a sustained rate as high as 82% and believes that rate is very high. (Exh. 5, pp. 59, 60). He feels a suspension of 30 days or more is a significant discipline. (Exh. 5, p. 60). He testified it is reasonable for an initial recommended discipline to be changed. (Exh. 5, p. 61). He is not giving an opinion that CPD officers drink and drive with impunity because "I don't know that." (Exh. 5, p. 64).

When Mr. Alpert spoke with Ms. Allgood, she told him she was asked two questions by the plaintiffs' attorneys and was supposed to answer them based on the data they gave her. (Exh. 5, p. 68). He does not know if Allgood's report complies with the ethical standards of the American Statistical Association and is unaware of what guidelines apply. (Exh. 5, pp. 84, 85).

When asked if the work he did in this case was nothing more than reading Allgood's report and deciding whether it made sense to him, Mr. Alpert testified "Basically, yes, sir." (Exh. 5, p. 53).

## APPLICABLE LAW

"The admissibility of expert testimony is governed by Federal Rule of Evidence 702 and the Supreme Court's opinion in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993)." (*Lewis v. Citgo Petroleum Corp.*, 561 F.3d 698, 705 (7th Cir. 2009)). "The Federal Rules of Evidence define an 'expert' as a person who possesses "specialized knowledge' due to his 'skill, experience, training, or education' that 'will assist the trier of fact to understand the evidence or to determine a fact in issue.'" (*Banister v. Burton*, 636 F.3d 828, 831 (7th Cir. 2011) (*quoting* Fed. R. Evid. 702)). Rule 702 also requires that: (1) the testimony must be based upon sufficient facts or data; (2) it must be the product of reliable principles and methods; and (3) the witness must have applied the principles and methods reliably to the facts of the case. (*Zamecnik v. Indian Prairie Sch. Dist. No. 204,* 636 F.3d 874, 881 (7th Cir. 2011) (*quoting* Fed. R. Evid. 702)).

"The district court functions as a gatekeeper with respect to testimony proffered under Rule 702 to ensure that the testimony is sufficiently reliable to qualify for admission." (*Mihailovich v. Laatsch*, 359 F.3d 892, 918 (7th Cir. 2004) (*citing Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999))). District courts must employ a three-part analysis before admitting expert testimony: (1) the expert must be qualified as an expert by knowledge, skill, experience, training, or education; (2) the expert's reasoning or methodology underlying his testimony must be scientifically reliable; and (3) the expert's testimony must assist the trier of fact in understanding the evidence or to determine a factual issue. (*See Myers v. Illinois Central R.R. Co.,* 629 F.3d 639, 644 (7th Cir. 2010); *see also United States v. Pansier*, 576 F.3d 726, 737 (7th Cir. 2009) ("To determine reliability, the court should consider the proposed expert's full range of experience and training, as well as the methodology used to arrive [at] a particular conclusion.")). "'The focus of the district court's *Daubert* inquiry must be solely on principles and methodology, not on the conclusions they generate.'" (*Winters v. Fru-Con Inc.*, 498 F.3d 734, 742 (7th Cir. 2007) (*quoting Chapman v. Maytag Corp.*, 297 F.3d 682, 687 (7th Cir. 2002))). "The goal of *Daubert* is to assure that experts employ the same 'intellectual rigor' in their courtroom testimony as would be employed by an expert in the relevant field." (*Jenkins v. Bartlett*, 487 F.3d 482, 489 (7th Cir. 2007) (*quoting Kumho Tire Co.*, 526 U.S. at 152)).

In *Daubert*, the Supreme Court offered the following non-exclusive factors to aid courts in determining whether a particular expert opinion is grounded in a reliable scientific methodology: (1) whether the proffered theory can be and has been tested; (2) whether the theory has been subjected to peer review and publication; (3) whether the theory has a known or potential rate of error; and (4) whether the relevant scientific community has accepted the theory. (*See Happel* v. *Walmart Stores, Inc.*, 602 F.3d 820, 824 (7th Cir. 2010); *Winters*, 498 F.3d at 742). Further, the 2000 Advisory Committee Notes to Rule 702 list additional factors for gauging an expert's reliability, including whether: (1) the testimony relates to matters growing naturally and directly out of research that was conducted independently from the instant litigation; (2) the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion; (3) the expert has adequately accounted for obvious alternative explanations; (4) the expert is being as careful as she would be in her regular professional work outside of paid litigation consulting; and (5) whether the expert's field of expertise is known to reach reliable results for the type of opinion the expert is giving. (*See American Honda Motor Co., Inc. v. Allen*, 600 F.3d 813, 817 (7th Cir. 2010); *Fuesting v. Zimmer, Inc.*, 421 F.3d 528, 534-35 (7th Cir. 2005), *vacated in part on other grounds*, 448 F.3d 936 (7th Cir. 2006)). Ultimately, "[t]he proponent of the expert bears the burden of demonstrating that the expert's testimony would satisfy the *Daubert* standard." (*Lewis*, 561 F.3d at 705).

Whether a witness is qualified as an expert can only be determined by comparing the area in which the witness has superior knowledge, skill, experience, or education with the subject matter of the witness's testimony. (*Gayton v. McCoy*, 593 F. 3d 610, 616 (7th Cir. 2010)). In performing its gatekeeping function, the District Court must ascertain not just whether "an expert witness is qualified in general, but whether his qualifications provide a foundation for [him] to answer a specific question." (*Id.* at 617). Although experts commonly extrapolate from data, reliable inferences "depend on more than just say-so, whether the person doing the saying is a corporate manager or a putative expert." (*Zenith Electronics Corp. v. WH-*

*TV Broadcasting Corp.*, 395 F. 2d 416, 419-420)). Testimony should not be admitted just because it is given by an expert. (*United States v. Mamah*, 332 F.3d 475, 478 (7th Cir. 2003)). An expert's subjective belief or speculation is expected to be rejected by the court. (*Ammons v. Aramark*, 368 F.3d 809, 816 (7th Cir. 2004)).

## ARGUMENT

### Ms. Allgood Should Be Barred

Ms. Allgood should be barred for several reasons. First, she is unqualified and has no foundation for her opinions and conclusions in this case. She has no experience and knows nothing about policing, police departments, investigations into police misconduct or the process by which discipline is imposed. Nothing in her study of public health issues or her background or experience provides any basis for the conclusions she derives from the data she reviewed. Her full time employment is a completely different subject matter from what she is trying to do here. (*See*, *i.e.*, *Wilson v. City of Chicago,* 6 F.3d 1233,1238-1239 (7th Cir. 1993); *LG Electronics v. Whirlpool Corp.*, 2010 WL 3613814 (N.D.Ill. September 3, 2010)). It is obvious she is only making conclusions based on the questions and data provided to her by plaintiffs' attorneys. Even plaintiffs' attorneys recognized this with their last minute attempt to have Mr. Alpert bless her report. It is not surprising she has never asked nor been qualified as an expert witness before.

Second, Allgood's methodology, if any, is unreliable. Her opinions and conclusions in response to plaintiffs' attorneys' questions are not the product of any reliable principle or method. There is nothing scientific about her conclusions and they cannot be tested. Any alleged theory for her conclusions is not a known theory nor does it possess a potential rate of error and no epidemiologist community has accepted it. With no police background, she has no idea whether the data she reviewed was complete or whether the sustain rates and discipline imposed are reasonable or significant. Moreover, she completely manufactured her own definition what "failure to report" means. She imputed data into a statistical software program, but did not have any methodology (nor could she without the proper background) as to how that relates to drinking and driving with impunity or a "code of silence." Even Mr. Alpert would not condone her methodology. She does not know police rules and makes assumptions without any factual basis. She applied no standards or relevant tests to her opinions and they are simply her own subjective beliefs. There is no scientific reliability or standard that has been tested. She has not tested it with other epidemiologists and there is no evidence her community would even accept her unsupported conclusions. She did nothing other than what plaintiffs' attorneys told her to do. Her opinions do not grow out of any research and she did not perform any research independent from this litigation or otherwise. She has not accounted for other conclusions and does not possess the expertise to reach reliable results for the questions she was asked to answer. Simply put, she has unjustifiably extrapolated to an unfounded conclusion in order to appease plaintiffs' attorneys.

Nor does having her report "peer reviewed" by Mr. Alpert avoid her being barred. Peer review by definition is "a process by which scholarly work is checked by a group of experts in the same field." (*Merriam-Websters' Dictionary*). Mr. Alpert is not in her field. He is not an epidemiologist and cannot boost Allgood's credibility or provide support for her report's admissibility. In addition, Mr. Alpert did not verify any of her work or conduct any independent research or tests. He simply read her report and said it sounds good to him. That does not meet the requirements of Rule 702 and *Daubert*.

Third, Ms. Allgood's testimony will not aid the trier of fact nor will it determine a factual issue. She did not even review any of the facts of the case. There is also an enormous analytical gap between the underlying data and Mr. Allgood's opinions. Again, her lack of police background and knowledge cannot be overlooked. She is essentially applying her own subjective thoughts to police data. She cannot assist the jury because she does not know the subject matter herself (which is why plaintiffs' attorneys apparently hired Mr. Alpert).

Ms. Allgood is attempting to support plaintiffs' *Monell* claim by her own say-so. Titling her an "expert" does not automatically translate her report and testimony into admissible evidence. Her subjective conclusions and belief should be rejected and she should be barred.

**Mr. Alpert Should Be Barred**

Mr. Alpert should be barred as duplicative. Mr. Alpert's report and opinion regarding Ms. Allgood's report should also be barred as he fails Rule 702 and *Daubert* in every conceivable way. He has no qualifications to review an epidemiologist's work, he applied no methodology in this case, and he will not assist the trier of fact in understanding either the evidence or determining a factual issue. By his own admission, he did nothing more than read Allgood's report. He did not test or verify the data or her conclusions in any way. It is clear he was hired to improperly boost Ms. Allgood's deficient testimony. But the rules of evidence cannot be so easily manipulated.

Mr. Alpert's is not qualified to "peer review" the Allgood report. He has no methodology for his work in this case. His work has not been reviewed, cited or published by his peers. His report does not grow out of any research independent of this litigation. He has not been as careful as he would be in his regular professional work as a criminologist and has never been asked to do what he was asked to do in this case. The community of criminologists has not accepted Allgood's opinions regarding drinking and driving and a "code of silence" and Mr. Alpert himself does not hold those opinions in this case. He unreasonably relied on Allgood's report without verifying or confirming it in any way. His testimony will not assist the trier of fact and would unduly prejudice and confuse the jury in violation of Rule 403. (*See* Fed. R. Evid. 403).

His report and opinion regarding Ms. Allgood's report should be rejected and he should be barred.

**CONCLUSION**

For all of the foregoing reasons and under the authorities cited above, Defendant, City of Chicago, respectfully requests that this Court enter an order barring Kristi Allgood and Geoffrey P. Alpert as witnesses in this matter and for any other relief this Court deems just and proper.

Respectfully submitted,

By: s/ Harry N. Arger
One of the Attorneys for Defendant,
CITY OF CHICAGO

Terrence M. Burns
Harry N. Arger
Paul A. Michalik
Daniel M. Noland
Dykema Gossett PLLC
10 South Wacker Drive, Suite 2300
Chicago, IL 60606
(312) 876-1700 (telephone)
(312) 876-1155 (facsimile)
harger@dykema.com

## CERTIFICATE OF SERVICE

Harry N. Arger, one of the attorneys for Defendant, City of Chicago, states that on **July 5, 2016**, he caused the foregoing **Memorandum of Law** to be filed with the Clerk of the United States District Court, via the CM/ECF System, which will send electronic notification to all counsel of record at their e-mail addresses on file with the Court.

By: s/Harry N. Arger